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6 Attorneys for Defendants
Bill Me Later, Inc., eBay Inc., and
7 PayPal, Inc.

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 KYLE SAWYER, Individually and
12 on behalf of all others similarly
situated,

13 Plaintiff,

14 v.

15 BILL ME LATER, INC., EBAY
16 INC., PAYPAL, INC., and DOES 1-
17 100,

18 Defendants.

Case No. **CV10 4461**
NOTICE OF REMOVAL

SJO (XG7)

2010 JUN 17 AM 11:30
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

FILED

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

2 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1446
3 and 1453, Defendants eBay Inc., PayPal, Inc., and Bill Me Later, Inc.
4 (“Defendants”), hereby remove this civil action from the California Superior Court
5 for the County of Los Angeles to the United States District Court for the Central
6 District of California, Western Division. Removal is proper because this is a
7 putative class action “brought in a State court of which the district courts of the
8 United States have original jurisdiction.” 28 U.S.C. §§ 1441(a) & 1453(b).
9 Specifically, this action satisfies the jurisdictional prerequisites under the Class
10 Action Fairness Act (“CAFA”). Minimal diversity exists because Bill Me Later is a
11 citizen of Maryland and the putative class are California citizens. Additionally, the
12 amount in controversy exceeds \$5 million dollars. This Notice of Removal is
13 timely because it has been filed within thirty days of the Defendants being served
14 with the summons and complaint. *See* 28 U.S.C. § 1446(b); *Murphy Bros. v.*
15 *Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999). This Court, therefore, has
16 original jurisdiction based upon diversity of citizenship. 28 U.S.C. § 1332.

17 **Prior Federal Complaint**

18 1. On or about January 4, 2010, Mr. Sawyer filed a class action complaint
19 in the Northern District of California, San Francisco Division, before the Honorable
20 Judge Jeffrey S. White against Defendants Bill Me Later and eBay. (Declaration of
21 Patricia B. Hsue Ex. 1.) Mr. Sawyer’s complaint challenged Bill Me Later’s
22 conduct under California consumer protection laws and the California Constitution
23 pursuant to CAFA. (*Id.*) eBay was included in the suit because it was Bill Me
24 Later’s corporate parent. (*Id.*) Mr. Sawyer alleged five separate causes of action:
25 (1) breach of contract under California Civil Code §1671; (2) violation of the
26 Consumers Legal Remedies Act (“CLRA”); (3) violation of the California
27 Constitution Article XV; (4) violation of the California Unfair Competition Law
28 under Business and Professions Code §17200 (“UCL”); and (5) aiding and abetting

1 by eBay. (*Id.* ¶¶ 63-92.) Mr. Sawyer also alleged that federal jurisdiction was
2 appropriate under CAFA because the class consists of “California residents,” eBay
3 is headquartered in California, and Bill Me Later is headquartered in Maryland.
4 (*Id.* ¶¶ 11-12, 14.) He further alleged federal jurisdiction was appropriate because
5 the class paid “illegal interest and penalties in excess of five million dollars
6 (\$5,000,000).” (*Id.* ¶ 15.)

7 2. On February 22, 2010, eBay and Bill Me Later filed motions to
8 dismiss with a noticed hearing date of April 23, 2010. (Hsue Decl. ¶ 2.) While the
9 motions were pending, Judge White vacated the hearing date and issued an Order to
10 Show Cause requiring Plaintiff to explain whether the Court had subject-matter
11 jurisdiction in light of Plaintiff’s argument, included in his opposition to eBay’s
12 motion to dismiss, that Bill Me Later and eBay are alter egos. (Hsue Decl. Ex. 2.)
13 The Court reasoned that if Bill Me Later was in fact eBay’s alter ego, its citizenship
14 would be defined based on eBay’s citizenship, and thus there would not be a
15 defendant with citizenship diverse from Plaintiff. (*Id.*)

16 3. On April 29, 2010, Mr. Sawyer filed a response to the Court’s order
17 arguing that subject-matter jurisdiction was appropriate under CAFA despite his
18 alter ego arguments because the legal standards for alter ego liability and for
19 citizenship differed. (Hsue Decl. Ex. 3 at 3-4.) One week later, eBay filed a Reply
20 to Mr. Sawyer’s Response concurring that subject-matter jurisdiction was
21 appropriate under CAFA, but for the reason that Bill Me Later and eBay are not in
22 fact alter egos, such a legal theory was entirely absent from the complaint, and Mr.
23 Sawyer failed to allege any facts to support that legal theory. (Hsue Decl. Ex. 4 at
24 2.)

25 4. On May 14, 2010, Judge White dismissed this action for lack of
26 subject-matter jurisdiction based on the allegations of the original complaint. The
27 Court called Plaintiff’s argument “disingenuous and an attempt to have it both
28 ways.” (Hsue Decl. Ex. 5 at 2.) The Court found that Plaintiff had failed to carry

1 his burden to satisfy the jurisdictional requirements because of his contradictory
 2 alter ego assertions, *i.e.* that eBay and Bill Me Later were not alter egos for the
 3 basis of jurisdiction, but were alter egos to defeat eBay's motion to dismiss the
 4 action. (*Id.* at 2-3.) The Court made no finding as to the evidence of alter ego,
 5 addressing only the implications of Plaintiff's bare assertion.

6 **Timeliness of Removal**

7 5. On May 21, 2010, Mr. Sawyer re-filed his class action complaint, with
 8 minimal alterations, in the Superior Court of the State of California for the County
 9 of Los Angeles. (Attached hereto as Exhibit A.) The complaint alleges identical
 10 causes of action, (Hsue Decl. Ex. 6 ¶¶ 71-100.), but adds PayPal, Inc., another
 11 wholly-owned eBay subsidiary, as a defendant as well. (*Id.* ¶ 13.) All Defendants
 12 were served with the summons and complaint that same day. (Hsue Decl. ¶ 3.)

13 6. Removal of this case is timely pursuant to 28 U.S.C. § 1446(b).
 14 Defendants filed this Notice of Removal within thirty days of the Defendants being
 15 served with the summons and complaint.

16 **Jurisdiction: Minimal Diversity of Citizenship**

17 7. This Court has original jurisdiction over this class action based on
 18 diversity of citizenship under CAFA. 28 U.S.C. § 1332.

19 8. Here, minimal diversity exists between Plaintiff and Defendants as
 20 follows:

21 a. The putative class is comprised solely of California citizens.
 22 (Hsue Decl. Ex. 6 ¶ 22.)

23 b. Defendant eBay is headquartered at 2145 Hamilton Avenue, San
 24 Jose, California 95125. (Hsue Decl. Ex. 6 ¶ 12.) For purposes of diversity
 25 jurisdiction, eBay is a California citizen. *Hertz Corp. v. Friend*, 130 S. Ct. 1181,
 26 1192-93 (2010).

27 c. Defendant PayPal is a wholly-owned subsidiary of eBay also
 28 headquartered at 2145 Hamilton Avenue, San Jose, California 95125. (Hsue Decl.

1 Ex. 6 ¶ 13.) For purposes of diversity jurisdiction, PayPal also is a California
2 citizen. *See Hertz Corp.*, 130 S. Ct. at 1192-93.

3 d. Defendant Bill Me Later is a subsidiary of eBay and is
4 headquartered in Timonium, Maryland. (Hsue Decl. Ex. 6 ¶ 11.) For purposes of
5 diversity jurisdiction, Bill Me Later is a citizen of Maryland. *See Danjaq, S.A. v.*
6 *Pathe Commc'ns Corp.*, 979 F.2d 772, 775 (9th Cir. 1992); *see also Hertz*, 130 S.
7 Ct. at 1192-93.

8 9. For a putative class action that meets the other requirements of CAFA,
9 diversity of citizenship exists if at least one plaintiff has diverse citizenship from at
10 least one defendant. 28 U.S.C. § 1332(d)(2). A corporation's citizenship is
11 determined based on the location of the company's principal place of business or
12 headquarters. *Hertz Corp.*, 130 S. Ct. at 1192-93. In a parent-subsidary context,
13 the companies are treated independently with citizenship determined by each
14 company's principal place of business or headquarters. *Danjaq, S.A.*, 979 F.2d at
15 775.

16 10. The only exception to the parent-subsidary rule in *Danjaq* is when
17 there is evidence of an alter ego relationship between the parent and subsidiary. *Id.*
18 The Ninth Circuit has held that to impute a parent's citizenship to its subsidiary—
19 and vice versa—there must be a “showing that the subsidiary is merely an alter ego
20 of its parent corporation” that will justify ignoring the corporate form. *Id.*
21 “Showing” that the subsidiary is an alter ego requires allegations of supporting facts
22 beyond simple conclusory statements. *Jeong v. Onada Cement Co.*, No. CV-99-
23 11092 GHK, 2000 WL 33954824, at *2 (C.D. Cal. May 17, 2000) (allegations that
24 “all the Defendants are alter egos of each other” or that the “subsidiaries [are]
25 owned wholly or in majority” are insufficient to impute citizenship). Courts will
26 weigh a number of factors in determining whether a subsidiary is merely the alter
27 ego of a parent.

28 11. Factors courts weigh include, among other things: (1) the degree of

1 control a parent exercises over the subsidiary; (2) the relationship between the
2 companies; (3) overlap in membership of the board of directors; and (4) whether the
3 companies maintain separate corporate books. 13F Charles A. Wright, Arthur R.
4 Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3625, at 135
5 (2009); *see also Danjaq*, 979 F.2d at 775; *Jeong*, 2000 WL 33954824, at *2.
6 Courts have also examined whether there is an absence of corporate formalities,
7 inadequate capitalization, overlap in ownership, and whether the corporations
8 engage in arms length transactions among themselves. *Powers v. Fox Television*
9 *Stations, Inc.*, 907 F. Supp. 719, 723-24 (S.D.N.Y. 1995).

10 12. Here, eBay, Bill Me Later and PayPal have properly maintained their
11 separate and independent corporate identities. Neither eBay nor PayPal use Bill Me
12 Later as a mere conduit to conduct their businesses. (Declaration of Kathryn W.
13 Hall ¶ 3.) Additionally, eBay, Bill Me Later, and PayPal maintain corporate
14 formalities. The three companies maintain separate Board minute books and
15 corporate records. (*Id.* ¶ 4.) Transactions between eBay, Bill Me Later, and PayPal
16 are documented with signed inter-company agreements with interest rates based on
17 arm's length rates in accordance with practices established in the financial markets.
18 (*Id.*) Each company is adequately capitalized to satisfy the obligations incurred in
19 their daily operations, maintains independent balance sheets, owns legal title to all
20 assets on their individual balance sheet, and does not concentrate all assets in one
21 company and all liabilities in another. (*Id.* ¶ 5.) The Defendants maintain
22 independent bank accounts with the balance documented in each company's
23 individual books and records. (*Id.*) Nor do eBay, PayPal, or Bill Me Later allow
24 any other company, including each other, the unauthorized use of its funds. (*Id.*)

25 13. Furthermore, the three companies maintain separate headquarters and
26 campuses, the majority of employees are independently employed by either eBay,
27 PayPal, or Bill Me Later, and the three companies use their own set of equipment.
28 (*Id.* ¶ 6.) The majority of Bill Me Later's employees are located in Timonium,

1 Maryland. (*Id.*) Each company has a Board of Directors. (*Id.* ¶ 7.) eBay shares no
 2 directors with Bill Me Later and PayPal shares only one director with Bill Me
 3 Later. (*Id.*) The three companies do not employ identical officers—with only two
 4 individuals serving as officers of all three companies. (*Id.*) And most of the
 5 executives for each company reside at their company's independent campus. (*Id.* ¶
 6 6.) It is general public knowledge that Bill Me Later and PayPal are wholly-owned
 7 subsidiaries of eBay. (*Id.* ¶ 8.)

8 14. Courts have relied on these same factors in determining whether an
 9 alter ego relationship exists. *See Monaco v. Liberty Life Assur. Co.*, No. C06-07021
 10 MJJ, 2007 U.S. Dist. LEXIS 31298, at *13-14 (N.D. Cal. Apr. 17, 2007)
 11 (identifying factors generally examined to ascertain true corporate relationship and
 12 whether one is the alter ego of another); *see also Sonora Diamond Corp. v.*
 13 *Superior Court*, 83 Cal. App. 4th 523, 538-43 (2000) (holding that no one factor is
 14 dispositive and the court must weigh the totality of the circumstances in deciding
 15 whether one entity is merely an alter ego of another).

16 15. Although Mr. Sawyer has alleged a few facts to support his alter ego
 17 contentions, these few facts do not justify disregarding the Defendants' independent
 18 corporate forms. (Hsue Decl. Ex. 6 ¶¶ 11-16, 21.) Courts have recognized that the
 19 facts alleged—oversight of Bill Me Later by PayPal's president, inclusion of Bill
 20 Me Later's CEO in PayPal's senior executive team, registering under the same
 21 corporate address in California, using the same agent for service of process, some
 22 overlap in employees, consolidated financial reporting, and providing funds to a
 23 subsidiary (*id.*)—are entirely consistent with a normal parent-subsidary
 24 relationship, which does not show alter ego status for jurisdictional or liability
 25 purposes. *See Fru-Con Constr. Corp. v. Sacramento Mun. Util. Dist.*, No. CIV 05-
 26 583 LKK/GGH, 2007 WL 2384841, at *6-7 (E.D. Cal. Aug. 17, 2007) (evidence of
 27 some interlocking officers and shared legal representation is a normal aspect of
 28 corporate ownership and insufficient for alter ego liability); *Maddock v. KB Homes*,

1 *Inc.*, 631 F. Supp. 2d 1226, 1243 (C.D. Cal. 2007) (listing same agent for service of
 2 process is not enough for alter ego liability); *F. Hoffman-LA Roche, Ltd. v. Superior*
 3 *Court*, 130 Cal. App. 4th 782, 798 (2005) (holding that a normal parent-subsiary
 4 relationship may include interlocking directors and officers, consolidated reporting,
 5 shared professional services, close financial connection and direction of
 6 management); *Sonora Diamond Corp*, 83 Cal. App. 4th at 538-39, 49-50
 7 (consolidated financial reporting and financially assisting a subsidiary to meet its
 8 legitimate financial obligations does not expose a parent to alter ego liability).

9 16. Moreover, Mr. Sawyer has already told another federal judge, related
 10 to his earlier complaint, that “Bill Me Later from its inception has been a
 11 completely independent company, *with no association with eBay* until eBay
 12 acquired Bill Me Later in 2008” with “headquarters [] at all relevant times [] in
 13 Timonium, Maryland.” (Hsue Decl. Ex. 3 at 4.) Mr. Sawyer further concedes that
 14 he “did not allege Bill Me Later has failed to observe all corporate formalities”
 15 (*id.*), that “the Complaint focuses primarily on *Bill Me Later’s* business model,
 16 which *predates* the purchase by eBay[,]” and that “*the allegations do not concern*
 17 *the distinct business of parent eBay. . . .*” (*Id.* at 5 (emphasis added).) Given these
 18 concessions, in addition to the lack of facts pled in the new complaint that would
 19 support a finding of alter ego, Mr. Sawyer’s alter ego allegations are insufficient
 20 and each company’s citizenship should be determined independently.

21 17. Defendants have satisfied the CAFA requirements for diversity
 22 jurisdiction. Minimal diversity exists because Bill Me Later is a Maryland citizen
 23 and the proposed class members are California citizens. Although Plaintiff includes
 24 allegations in his complaint that eBay and PayPal are alter egos of Bill Me Later, he
 25 fails to allege sufficient facts to rebut the presumption of the Defendants’ corporate
 26 independence for purposes of determining citizenship. *See Danjaq*, 979 F.2d at
 27 775; *Jeong*, 2000 WL 33954824, at *2. Thus, Bill Me Later’s citizenship is based
 28 on its corporate headquarters in Maryland. *See Hertz Corp.*, 130 S. Ct. at 1192-93.

1 Additionally, because the complaint primarily focuses on Bill Me Later's actions,
 2 as Plaintiff already has admitted (Hsue Decl. Ex. 3 at 4), diversity jurisdiction under
 3 CAFA is appropriate. 28 U.S.C. § 1332(d)(4).

4 **Jurisdiction: Amount in Controversy**

5 18. In addition to minimal diversity, CAFA also requires that the amount
 6 in controversy exceed the sum or value of \$5,000,000, exclusive of interest or costs.
 7 28 U.S.C. §1332(d)(2). Mr. Sawyer has requested remedies including injunctive
 8 relief, rescission of all loan contracts, damages equal to three times the interest paid
 9 by the class, and punitive damages. (Hsue Decl. Ex. 6 ¶¶ A-G.) He has previously
 10 alleged, in a nearly identical complaint, that the amount in controversy exceeds
 11 \$5,000,000. (Hsue Decl. Ex. 1 ¶ 15.) And Bill Me Later, Inc. collected more than
 12 five million dollars in interest from California citizens from May 2009 to May
 13 2010. (Declaration of Richard Stromberg ¶ 3.) Thus, Defendants have satisfied the
 14 amount in controversy requirement for subject-matter jurisdiction under CAFA. 28
 15 U.S.C. §1332(d)(2).

16 **Joinder of Co-Defendants in Removal**

17 19. All Defendants have joined in this Notice of Removal. (Hsue Decl. ¶
 18 4.)

19 **Venue (Western Division)**

20 20. Filing the notice of removal is proper in this district and division
 21 because the California Superior Court for the Los Angeles County is located within
 22 the Federal Central District of California, Western Division. Therefore, venue for
 23 this Notice is proper pursuant to 28 U.S.C. § 84(a) because this is the "district and
 24 division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

25 **Conclusion**

26 21. In sum, this Court has removal jurisdiction over this action under 28
 27 U.S.C. §§ 1441(a) and 1453(b) because minimal diversity exists and this Notice has
 28 been filed within thirty days of Defendants being served with the summons and

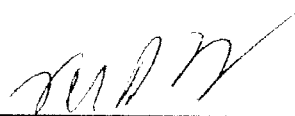
1 complaint and within one year of the original filing of the action. *See* 28 U.S.C. §
2 1446(b).

3 22. Written notice of the filing of this Notice of Removal is hereby given
4 to Plaintiff.

5 23. A Notice of filing of this Notice of Removal will be filed with the
6 Clerk of the Superior Court of the State of California for the County of Los
7 Angeles.

8 Dated: June 17, 2010
9

10 O'MELVENY & MYERS LLP

11
12 By: 
13 Thomas P. Brown

14 Attorneys for Defendants
15 Bill Me Later, Inc., eBay Inc., and
16 PayPal, Inc.

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EXHIBIT A

ORIGINAL

5/21/2010

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90503
complex

FILED
Los Angeles Superior Court

MAY 21 2010

John A. Clarke, Executive Officer/Clerk
By *[Signature]*, Deputy
DOROTHY SWAIN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

17 KYLE SAWYER, Individually and on behalf of)
18 all others similarly situated,)

Plaintiff,

v.

19 BILL ME LATER, INC., EBAY INC.,
20 PAYPAL, INC., and DOES 1-100,

Defendants.

No.

BC438153

CLASS ACTION

COMPLAINT FOR DAMAGES,
RESTITUTION, AND INJUNCTIVE
RELIEF

JURY TRIAL DEMANDED

CIV/CASE: BC438153 LEA/DEP:
RECEIPT #: CCH18762974
DATE PAID: 05/21/10 03:20:28 PM
PAYMENT: \$355.00 C310
RECEIVED:
CHECK: 355.00
CASH:
CHANGE:
CARD:

CHECK: 355.00
CASH:
CHANGE:
CARD:

CHECK: 355.00
CASH:
CHANGE:
CARD:

CIV/CASE: BC438153 LEA/DEP:

5/21/2010

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1 Plaintiff, Kyle Sawyer, brings this class action suit against Bill Me Later, Inc., eBay, Inc.
2 and PayPal, Inc. on behalf of himself and all others similarly situated. The following allegations
3 are based on information and belief, except as to allegations specifically pertaining to Plaintiff,
4 which are based on personal knowledge.

5 I. NATURE OF ACTION

6 1. Defendant Bill Me Later, Inc. ("Bill Me Later"), which offers an instant,
7 transactional credit plan that consumers can use at the point-of-sale to check out and make online
8 purchases, has structured a relationship with CIT Bank, an out-of-state bank, to disguise the true
9 lending relationship in connection with these consumer loans.

10 2. The purpose and structure of the relationship between Bill Me Later and CIT Bank
11 is to facilitate Bill Me Later's illegal efforts to avoid California laws that protect consumers from
12 being charged usurious interest rates and contractual penalties.

13 3. Bill Me Later, which is neither a state or federally chartered financial institution nor
14 a licensed financial lender, is subject to generally applicable California consumer-protection laws
15 and is prohibited from charging contractual penalties and usurious interest rates. Bill Me Later has
16 devised a scheme with the purpose and intent to avoid these California consumer-protection laws,
17 thereby causing injury to consumers and competitors.

18 4. Bill Me Later has constructed a scheme whereby it in effect "rents" CIT Bank's
19 name and its bank charter as a sham, so that Bill Me Later can evade California law which would
20 otherwise prohibit Bill Me Later from making loans with usurious interest rates and charging
21 illegal contractual penalties. Bill Me Later has structured this "rent-a-charter" relationship with
22 CIT Bank to completely escape regulatory oversight, while at the same time hiding under the
23 preemption umbrella afforded to certain banking institutions – even though Bill Me Later is the
24 true lender in its relationship with consumers.

25 5. Instead of using a credit card number to checkout during an online purchase of
26 goods or services, shoppers click on the Bill Me Later icon and are asked for the last four digits of
27 their Social Security number and their date of birth. If their credit is satisfactory according to Bill
28 Me Later's sophisticated credit scoring algorithm, Bill Me Later arranges the transfer of payment

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- 1 -

CLASS ACTION COMPLAINT

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1 to the merchant and sends the shopper a bill within two weeks. Shoppers can pay right away, or
 2 later with usurious interest rates and subject to exorbitant penalties for paying late. Shoppers can
 3 pay their bill online through their bank or with a check by mail.¹

4 6. At all material points in a lending transaction involving Bill Me Later, Bill Me Later
 5 controls the loan transaction. Accordingly, the legal and economic reality of all transactions is that
 6 Bill Me Later is the true lender to the consumer – not CIT Bank. Facts demonstrating Bill Me
 7 Later is the true lender include but are not limited to:

- 8 • Bill Me Later is the sole entity to interface with the consumers;
- 9 • Bill Me Later owns and controls the branding of the loans which are available only
 10 through its proprietary credit approval software engine;
- 11 • Bill Me Later provides and accepts the online loan applications for consumers;
- 12 • Bill Me Later reviews the credit of consumer applicants and decides whether to
 13 make the loans using Bill Me Later's credit decision computer model;
- 14 • Bill Me Later owns both the liabilities (including risk of default) and receivables for
 15 the loans it approves;
- 16 • Bill Me Later services the accounts and accepts loan payments from consumers; and
- 17 • Bill Me Later claims the consumer loans as assets in its independently audited
 18 financial statements and sets the late fees and interest rates about which Plaintiff and
 19 the Class complain.

20 7. In truth, CIT Bank is not the "lender" but instead has agreed to the structure for a
 21 fee so that Bill Me Later may attempt to avoid California laws prohibiting excessive late fees and
 22 usurious interest rates. Indeed, when the tiered late fees are included, the imputed APR can exceed
 23 100%.

24 8. For example, one consumer complained:

25 While ordering books online for \$40.87, I was invited to open a
 26 BillMeLater account, which I did, wanting to know how it worked; I
 27 paid \$20.07 for the first billing cycle. I forgot the due date of the
 28 second billing cycle, since it's not part of my regular bills. On a
 balance of \$20.87, I was charged a late fee of \$19.00, plus \$2 finance
 charge. On their website, my statement shows an **ANNUAL**
PERCENTAGE RATE OF 115% !!! I am charged a daily fee of
 \$0.35. I wanted to pay my total remaining balance, & immediately

¹ Erika Brown, *Technology: Credit Card Killer*, Forbes.com, Dec. 11, 2006, http://www.forbes.com/forbes/2006/1211/068_2.html (last visited May 18, 2010); Bill Me Later, *About Bill Me Later: The Product* (2009), https://www.billmelater.com/about/index.xhtml?s_kwcid=billmelater (last visited May 18, 2010).

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cancel my account. Their system did not allow me to do that: I had to do it on two different days; in the meantime, of course, they are charging more money. This is pure usury; these companies should not be allowed to be in business; they should be sued, made to reimburse their exorbitant fees, terminated, and closed.²

9. Bill Me Later must comply with California law and is not doing so on a continuing basis. Accordingly, Plaintiff and the Classes bring this suit to enjoin Defendants from future illegal conduct that is harmful to consumers and to Defendants' competitors and to recover funds for consumers who were charged illegal and unfairly high interest rates and unlawful late fees. This action arises under California Civil Code section 1671, California's Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*, Section 1 of Article XV of the California Constitution, and the Unfair Competition Law §§ 17200, *et seq.*

II. PARTIES

10. Plaintiff, Kyle Sawyer, resides in Torrance, California, and has used the Bill Me Later service and was charged and has paid unlawful interest rates and penalty fees.

11. Defendant Bill Me Later is a subsidiary of Defendant eBay, Inc. ("eBay"). Bill Me Later is headquartered in Timonium, Maryland, with additional offices in Hunt Valley, Maryland, and San Francisco, California. As registered on the California Secretary of State's website, Bill Me Later's address is 2145 Hamilton Avenue, San Jose, California, 95125. Bill Me Later's Agent for Service of Process in California is National Registered Agents, Inc., 2875 Michelle Drive, Suite 100, Irvine, California, 92606.

12. Defendant eBay is the parent company of Bill Me Later. The address of eBay's headquarters is 2145 Hamilton Avenue, San Jose, California, 95125. EBay's Agent for Service of Process in California is National Registered Agents, Inc., 2875 Michelle Drive, Suite 100, Irvine, California, 92606. In 2008, eBay paid \$945 million to acquire Bill Me Later.³ In its Form 10-Q, filed with the Securities and Exchange Commission ("SEC"), dated April 28, 2009, eBay stated:

² See RipoffReport.com, Report: BillMeLater, <http://www.ripoffreport.com/Credit-Debt-Services/BillMeLater/billmelater-stay-away-from-bil-eq8f2.htm> (last visited May 18, 2010). All internal citations and quotations omitted and all emphasis added, unless otherwise indicated.

³ Scott Moritz, *EBay to lend buyers a hand*, CNNMoney.com, Oct. 6, 2008, <http://money.cnn.com/2008/10/06/technology/ebay-bill-me.fortune/index.htm> (last visited May 18, 2010).

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1 "Bill Me Later . . . purchases the receivable related to the consumer loan extended by CIT Bank"⁴
 2 and "[w]e currently fund the purchase of receivables related to Bill Me Later accounts through free
 3 cash flow generated from our portfolio of businesses and from our existing line of credit."⁵ Thus,
 4 eBay aids and abets Bill Me Later's violations of California law described herein because it
 5 actively manages and enables the funding and purchasing of the consumer loans at issue.

6 13. Defendant PayPal, Inc. ("PayPal") is a wholly-owned subsidiary of eBay. The
 7 address of PayPal's headquarters is 2145 Hamilton Avenue, San Jose, California, 95125. PayPal's
 8 Agent for Service of Process in California is National Registered Agents, Inc., 2875 Michelle
 9 Drive, Suite 100, Irvine, California, 92606.

10 14. Upon its acquisition of Bill Me Later, eBay publicly stated its intent to combine Bill
 11 Me Later with PayPal, another of eBay's payment subsidiaries. Bill Me Later was to become a
 12 business unit which was a part of eBay's PayPal subsidiary. eBay announced that the president of
 13 PayPal, Scott Thompson, would "oversee" both PayPal and Bill Me Later. Gary Marino, the chief
 14 executive officer of Bill Me Later, "will report to Thompson [the president of PayPal] as part of the
 15 PayPal senior executive team."⁶ eBay repeatedly stated its plans to merge the PayPal and Bill Me
 16 Later systems.⁷

17 15. On information and belief, since being acquired by eBay, PayPal has integrated the
 18 Bill Me Later systems and functionality into PayPal. In eBay's latest Form 10-K, filed with the
 19 SEC, eBay stated:

20 We continue to invest in product development designed to capitalize
 21 on synergies between Bill Me Later and other eBay brands. In 2009,
 22 we introduced Bill Me Later as a funding source within a PayPal
 23 account for certain U.S. customers and we also began to offer Bill
 24 Me Later as a payment method on eBay.com in the U.S. In 2010, we
 intend to further expand these offerings. In addition, we have
 25 **combined our PayPal and Bill Me Later merchant sales teams** and
 26 have begun selling both the PayPal and Bill Me Later solutions in a

27 ⁴ eBay Inc., Quarterly Report (Form 10-Q), at 30 (Apr. 28, 2009).

28 ⁵ eBay Inc., Quarterly Report (Form 10-Q), at 42 (Apr. 28, 2009).

⁶ See Press Release, eBay Inc., *eBay Extends Leadership In Online Payments* (Oct. 6, 2008) <http://investor.ebay.com/releasedetail.cfm?releaseid=338502> (last visited on May 18, 2010).

⁷ See, e.g., Daniel Wolfe, *eBay Set To Merge Paypal and Bill Me Later Systems*, AmericanBanker.com, Mar. 13, 2009, http://www.americanbanker.com/issues/174_52/374571-1.html (last visited May 18, 2010).

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1 coordinated effort to offer merchants greater efficiency in product
2 integration.⁸

3 16. Gary Marino, the former CEO of Bill Me Later, is now the Senior Vice President of
4 Credit Products and Risk of PayPal.⁹ In this role, he leads PayPal's credit business including its
5 flagship Bill Me Later transactional credit service, as well as PayPal's global portfolio of credit
6 products offered in conjunction with its banking partners. He also oversees the team responsible
7 for risk management and the security of the PayPal system.

8 17. When posed the question, "Are Bill Me Later and PayPal the same company?"
9 PayPal has publicly and evasively responded: "PayPal acquired Bill Me Later in November 2008.
10 Both Bill Me Later and PayPal are committed to providing customers with the fastest, most
11 convenient online buying experience."¹⁰

12 18. The true names and capacities (whether individual, corporate or otherwise) of
13 Defendants Does 1-100, inclusive, are unknown to Plaintiff. Therefore, Plaintiff sues those
14 Defendants by such fictitious names pursuant to California Code of Civil Procedure section 474.
15 Plaintiff further alleges that each fictitious Defendant is in some manner responsible for the acts
16 and occurrences alleged herein. Plaintiff will seek leave of this Court to amend this complaint to
17 state the true names and capacities of said fictitiously named Defendants when same have been
18 ascertained. Plaintiff is informed and believes, and on that basis alleges, that the fictitiously named
19 Defendants proximately caused his damages.

20 19. Plaintiff and the Class allege on information and belief that all of the acts and
21 omissions described in this Complaint by any Defendant were duly performed by, and attributable
22 to all Defendants, each acting as agent and/or under the direction and control of the others, and
23 such acts and omissions were within the scope of such agency, direction, and/or control. Any
24 reference in this Complaint to any acts of Defendants shall be deemed to be the acts of each and
25 every defendant acting individually, jointly or severally.

26 ⁸ EBay Inc., Annual Report (Form 10-K), at 11 (Feb. 17, 2010).

27 ⁹ See PayPal, Executive Team, <https://www.paypal-media.com/management.cfm> (last visited May 18, 2010).

28 ¹⁰ See PayPal Frequently Asked Questions: Bill Me Later, <https://www.paypal.com/cgi-bin/webscr?Cmd=xpt/Marketing/billmelater/BillMeLater-outside> (last visited May 18, 2010).

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1 20. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants
2 named herein, including those Defendants named as Doe Defendants, acted as the agent, employee,
3 representative partner, joint venture, or co-conspirator of each of the other Defendants named
4 herein in the commission of the acts and omissions to act alleged herein, and acted within the
5 course and scope of his, her, or its duty as such agent, employee, representative, partner, joint
6 venture or co-conspirator. The acts of each such Defendant were authorized and/or ratified by each
7 other Defendant, and together constitute a single and continuing course of conduct.

8 21. EBay and PayPal are liable as the alter egos of Bill Me Later. As detailed above,
9 eBay and PayPal have engaged in manipulative conduct which relegates Bill Me Later to the status
10 of merely an instrumentality, agency, conduit or adjunct. There is such unity of interest and
11 ownership between eBay and PayPal on the one hand, and Bill Me Later on the other, that the
12 separate personalities of the corporations no longer exist. Similarly, an inequitable result will
13 follow if the acts of Bill Me Later are treated in isolation. Without the inclusion of eBay and
14 PayPal, on information and belief, it is not certain that Bill Me Later has sufficient assets to satisfy
15 a judgment in this action. EBay's filings with the Securities and Exchange Commission and public
16 statements demonstrate that all assets lie with eBay and PayPal, and not with Bill Me Later. EBay
17 funds the purchase of receivables related to Bill Me Later through its cash flow and credit lines. A
18 reasonable inference therefrom is that Bill Me Later itself does not have sufficient capital to
19 purchase these receivables. Given these statements eBay and PayPal, as the parent companies, are
20 necessary parties to this case to achieve an equitable result.

21 III. CLASS ALLEGATIONS

22 22. Plaintiff brings this action on behalf of himself and all other persons similarly
23 situated pursuant to California Code of Civil Procedure 382 and California Civil Code
24 section 1781. Plaintiff seeks to certify and represent the following Classes:

25 a. ***California Damages/Restitution Class:*** All California citizens who received
26 a loan using the services offered by Bill Me Later and were charged and paid interest in excess of
27 ten percent within four years from the filing of this action up to and including the date judgment is
28 entered in this action;

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1 b. **California Damages/Restitution Subclass:** All California citizens who
2 received a loan using the services offered by Bill Me Later and were charged and paid interest in
3 excess of ten percent and were also charged and paid a late fee within four years from the filing of
4 this action up to and including the date judgment is entered in this action; and

5 c. **Injunctive Relief Class:** All California citizens who are current customers
6 of Bill Me Later.

7 23. Plaintiff alleges, on information and belief, that the classes are composed of
8 thousands of people who have been charged and paid illegal interest and penalties in excess of
9 twenty-five thousand dollars (\$25,000). The members of the classes are so numerous and
10 geographically dispersed throughout the state of California that joinder of all class members in this
11 action is impracticable.

12 24. The identities and addresses of the individual members of the classes are
13 ascertainable through Bill Me Later's billing records.

14 25. Plaintiff's claims are typical of the claims of the members of the classes because
15 Plaintiff and all members of the classes were damaged by the same wrongful conduct, namely the
16 imposition of usurious interest rates and penalty fees. Additionally, in the absence of injunctive
17 relief, Defendants' practices are generally applicable to all class members.

18 26. Plaintiff will fairly and adequately represent and protect the interests of the classes.
19 Plaintiff's interests are coincident with and not antagonistic to those of the classes. In addition,
20 Plaintiff is represented by counsel experienced and competent in the prosecution of complex class
21 actions on behalf of consumers.

22 27. There are numerous common questions of law and fact that predominate over any
23 issues affecting individual class members. Among the questions of law and fact common to the
24 classes are:

25 a. Whether Bill Me Later is subject to generally applicable California
26 consumer-protection laws;

27 b. Whether Bill Me Later charges unlawful usurious interest rates in violation
28 of the California Constitution or other applicable California laws;

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1 c. Whether Bill Me Later charges unlawful and unenforceable contractual
2 penalties in violation of California law;

3 d. Whether Bill Me Later should be enjoined from imposing and collecting
4 unlawful usurious interest payments and contractual penalties from California consumers; and

5 e. Whether eBay has unlawfully aided and abetted Bill Me Later's violations of
6 California law.

7 28. Defendants have acted and continue to act in a manner generally applicable to class
8 members, thereby making appropriate final injunctive relief or corresponding declaratory relief
9 with respect to the Injunctive Relief Class as a whole.

10 29. Class treatment will benefit the class members, the parties, and the courts and is
11 superior to the alternatives, if any exist, for the fair and efficient adjudication of this controversy.
12 Individual California consumers are unlikely to obtain relief in the absence of class treatment.

13 30. Plaintiff knows of no unusual difficulties that are likely to be encountered in the
14 management of this action that would preclude its maintenance as a class action.

15 IV. JURISDICTION AND VENUE

16 31. This case is classified as an unlimited civil case, where damages sought are in
17 excess of twenty-five thousand dollars (\$25,000). Defendants transact significant business in
18 California and within this county, and Defendants carried out significant illegal business practices
19 within California and this county. In addition, Defendant eBay maintains its corporate
20 headquarters in California.

21 32. Venue is proper in this county because Defendants are corporations and this matter
22 involves a contract made in this county. Moreover, the obligations, liabilities, and alleged breach
23 occurred in this county.

24 V. CALIFORNIA LAW GOVERNING LATE FEES AND INTEREST RATES

25 33. Section 1671 of the California Civil Code prohibits provisions in a consumer
26 contract liquidating damages for its breach except where the parties have agreed to an amount
27 reasonably related to the actual damages sustained when it would be impracticable or extremely
28 difficult to fix the actual damages; otherwise the liquidated damages are construed to be unlawful

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1 penalties. Federal laws and regulations, such as the National Banking Act, potentially preempt
2 efforts to enforce this state statute against penalty fees charged in conjunction with loans made by
3 banks chartered out-of-state.

4 34. The State of California, by Section 1 of Article XV of the California Constitution,
5 prohibits usury and deems to be usurious interest rates on personal loans that exceed ten percent
6 per annum. Loans made by banks chartered out-of-state potentially are exempt from the California
7 Constitution's usury prohibition.

8 VI. UNLAWFUL PRACTICES BY BILL ME LATER

9 35. Bill Me Later is an instant, transactional credit plan that consumers use at the point-
10 of-sale to check out and make online purchases of particular goods and services. In contrast to
11 credit cards, which provide for a revolving line of credit, transactional credit is only authorized on
12 an item-by-item basis when goods or services are being purchased. Therefore, each instance when
13 a consumer applies for transactional credit depends on a near real-time instantaneous credit
14 decision by Bill Me Later that, if approved, is a transaction specifically intended and authorized to
15 result (and indeed does result) in the sale of goods or services.

16 36. The Bill Me Later payment solution is available on the websites of more than 1,000
17 online stores, catalogs and travel partners, including during the relevant period Borders, Blue Nile,
18 Bluefly, Continental Airlines, eLUXURY, Fujitsu, JetBlue, Overstock, QVC, Toshiba, Toys "R"
19 Us, U.S. Airways, Walmart.com and Zappos.

20 37. Bill Me Later is the true lender to the consumer in these transactions because it: (1)
21 is the sole entity to interface with the consumers, owns and controls the branding of the loans
22 which are available only through its credit software engine; (2) provides the online loan
23 applications for consumers, accepts the online loan applications from consumers, reviews the credit
24 of consumer applicants, decides whether and under what terms to make the loans; (3) is the entity
25 to extend the credit to consumers, services the accounts, accepts loan payments from consumers,
26 takes on the risk of consumers defaulting on their loans, claims the consumer loans as assets in its
27 independently audited financial statements, and sets the late fees and interest rates about which the
28 Plaintiff and the classes complain. CIT Bank is not the true lender, and instead Bill Me Later uses

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1 CIT Bank's charter for purposes of circumventing California laws limiting late fees and interests
2 rates. Indeed, eBay's close to one billion dollar (\$1,000,000,000) purchase of Bill Me Later belies
3 any notion that Bill Me Later is simply relegated to the role of a small loan servicing agent acting
4 on behalf of CIT Bank.

5 38. Courts have looked to the factors described above to determine the existence of a
6 sham or illusory lending relationship. *See, e.g., Discover Bank v. Vaden*, 489 F.3d 594, 602-03
7 (4th Cir. 2007) (factors include whether the bank extended the credit and set the interest and fees,
8 whether the bank takes on the risk, and whether independently audited financial statements identify
9 the loans as assets of the bank); *Flowers v. EZPawn Okla., Inc.*, 307 F. Supp. 2d 1191, 1205 (N.D.
10 Okla. 2003) (determining that the following allegations supported finding the bank *was not* the true
11 lender: "Although the loan proceeds are paid to borrowers by checks purportedly drawn from
12 County Bank, EZCorp through EZPawn exerts ownership and control over these loans. EZCorp
13 through EZPawn carries out all interaction with the borrowers, accepts the ultimate credit risk,
14 collects and pockets virtually all of the finance charges and fees, and owns and controls the
15 branding of the loans which are available only at its pawnshops.").

16 39. Moreover, when looking at the practice of "rent-a-charters" in the context of the
17 payday loan industry, the Office of the Comptroller of Currency ("OCC"), the agency that
18 regulates federal banks, has asserted that "the standard for finding complete preemption is not met"
19 where "the only defendant . . . is not a national bank."¹¹

20 40. As further evidence that Bill Me Later is not merely a loan servicing company, its
21 executive team comes with deep roots in the credit card lending industry. The chief executive
22 officer of Bill Me Later, Gary Marino, had an extensive background in the lending industry before
23 founding Bill Me Later, which made a huge investment in its proprietary lending model. Mr.
24 Marino spent fifteen years at Citibank, rising to chief credit officer, and then left in 1996 to run the
25 credit and marketing operations at First USA, which was purchased by Bank One the next year.
26 By 2000, Mr. Marino had helped boost its receivables to \$70 billion. Mr. Marino left that year to
27

28 ¹¹ Pearl Chin, *Payday Loans: The Case for Federal Legislation*, 2004 U. of Ill. L. Rev. 723, 734.

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1 start Bill Me Later and secured \$100 million in venture capital to develop Bill Me Later's complex
2 and proprietary lending model.

3 41. An article from Forbes confirms that:

4 Bill Me Later's push-button simplicity masks layers of hard-core
5 engineering. When a shopper clicks the Bill Me Later icon for the
6 first time, I4 rummages through 30 million pieces of data in 11
7 public databases used by credit bureaus and utilities. I4 cross-checks
8 your Social Security digits and birth date against the usual credit data
9 as well as esoterica such as known fraudulent addresses and bank
10 accounts. After I4 scrubs the data of duplication and error, it adds
11 the new shopper to its databases. . . . Every subsequent purchase
12 triggers I4's software to use complex mathematical techniques such
13 as fuzzy logic and regression analysis to decide if a shopper is who
14 he says he is, and how likely he is to pay his bills. All this happens
15 in less than three seconds . . . [I4's] systems have to be
16 extraordinarily precise to make a smart lending decision in less time
17 than it takes to swipe a credit card.¹²

18 42. I4Commerce, Inc. ("I4") has since taken the name of its flagship product and is
19 known as Bill Me Later.¹³ Thus, this is further evidence that Bill Me Later is the true lender, as it
20 is the entity that performs the credit check and approval for the prospective consumers of its online
21 transactional credit.

22 43. Indeed, in the Frequently Asked Questions section of its website, Bill Me Later
23 acknowledges that it is the entity that reviews the credit of consumer applicants:

24 Bill Me Later will review your credit report prior to opening your
25 account. You must provide us permission to review your credit
26 report when completing your request to become a Bill Me Later
27 customer. Bill Me Later is a credit account that you can use to make
28 purchases. Bill Me Later will review the current status of your
account each time you make a purchase but your full credit report is
not reviewed for every Bill Me Later purchase. . . . Bill Me Later
does not review your credit report for each transaction. However,
your credit report may be reviewed periodically to provide you with
the maximum buying power possible. . . . We do re-evaluate this
regularly. As you establish a good payment record with Bill Me
Later, you will have greater chances of being approved for each
purchase you attempt.¹⁴

¹² Erika Brown, *Technology: Credit Card Killer*, Forbes.com, Dec. 11, 2006, http://www.forbes.com/forbes/2006/12/11/068_2.html (last visited May 18, 2010).

¹³ Scott Dance, *I4Commerce changes name to Bill Me Later*, Baltimore Business Journal, Aug. 16, 2007, <http://www.bizjournals.com/baltimore/stories/2007/08/13/daily33.html> (last visited May 18, 2010).

¹⁴ Bill Me Later Frequently Asked Questions (2009), <https://www.billmelater.com/help/index.xhtml>.

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1 44. This acknowledgement contradicts Bill Me Later's superficial and economically
 2 hollow effort in its Terms and Conditions to suggest that CIT Bank is the party responsible for
 3 providing credit checks. In the Terms and Conditions, Bill Me Later defines CIT Bank as "the
 4 Lender" and then goes on to state that the consumer must "authorize the Lender to review your
 5 credit report" and that the "Lender may obtain a report from a consumer credit reporting agency in
 6 connection with this application and/or for any updates, renewals, extensions or credit on this
 7 Account."¹⁵ In actuality, Bill Me Later performs the credit checks as described above. Even CIT
 8 Bank recognizes that "Bill Me Later does a quick credit review, processed behind the scenes."¹⁶

9 45. Bill Me Later also makes the decision whether to adjust its loan portfolio based on
 10 the results of the credit analysis it conducts. During eBay's quarterly earnings conference call on
 11 April 22, 2009, eBay's Chief Financial Officer and Senior Vice President of Finance, Robert H.
 12 Swan ("CFO"), stated:

13 On the first one on Bill Me Later, the primary decline is in the loan
 14 portfolio balance at the end of the period so that the full 90 days is
 15 not really a driver. But the decline in the loan portfolio or the
 16 balance at the end of the period is primarily driven by two things.
 17 One is just seasonality. Fourth quarter is a higher quarter for Bill Me
 18 Later and then those consumers pay off their balances in a relatively
 19 timely manner so Q4 to Q1 seasonality with Bill Me Later is all else
 20 equal, going to be coming down. And *secondly and probably more*
 21 *importantly is our credit decision you mentioned in that our*
 22 *collective desire and the team's ability with their decision you*
 23 *mentioned to in tough economic times and tough credit*
 24 *environments with high unemployment, they have the ability in*
 25 *their model to be tighter in their decisioning and we did that during*
 26 *the course of the quarter and as a result we took on lower balances*
 27 *consciously as we tried to manage the dynamics between both*
 28 *growth and risk management.*¹⁷

29 46. Similarly, during a quarterly earnings conference call that took place on July 22,
 30 2009, eBay's CFO again demonstrated that Bill Me Later is the entity to decide whether to make
 31 the loans to consumers:

32 ¹⁵ Bill Me Later, Terms and Conditions of the Bill Me Later Payment System (2009), <https://www.securecheckout.billmelater.com/paycapture-content/fetch?hash=PD4106KD&content=bmlweb/bmlwebtnc.html>.

33 ¹⁶ CIT Group, Products and Services: bill-me-later, *CIT Bank Helps Make Shopping on the Internet Easy, Quick and Secure with "Bill Me Later"* (2009), <http://www.cit.com/products-and-services/cit-bank/bill-me-later/index.htm> (last visited May 18, 2010).

34 ¹⁷ Seeking Alpha, eBay Q1 2009 Earnings Call Transcript, Apr. 22, 2009, <http://seekingalpha.com/article/132454-ebay-inc-q1-2009-earnings-call-transcript?page=1> (last visited May 18, 2010).

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Let me touch on a few key operating metrics from Bill Me Later. Bill Me Later's gross receivable balance at quarter end was \$553 million. *We continue to be cautious in our credit approval process in order to manage the quality of new receivables we under-write*,¹⁸ which we believe is the right trade-off in the current environment.

47. And in its 10-Q dated April 28, 2009, eBay further stated:

The Bill Me Later service is offered to a wide range of consumers, and the profitability of this business *depends on our ability to manage credit risk* while attracting new consumers with profitable usage patterns. *Bill Me Later approves loans using proprietary segmentation and credit scoring algorithms and other analytical techniques designed to analyze the credit risk of the specific transaction.* These algorithms and techniques may not accurately predict the creditworthiness of a consumer due to, among other factors, inaccurate assumptions about a particular consumer or the economic environment. Bill Me Later may also incorrectly interpret the data produced by these algorithms *in setting its credit policies.*¹⁹

48. It makes sense that Bill Me Later would be the entity to perform the credit analysis and make the loan decisions because, in addition to servicing the accounts, *Bill Me Later bears the risk of loss associated with the loans.* Bill Me Later's Terms and Conditions state that the consumer accounts are "operated and serviced by Bill Me Later" and that "Bill Me Later Inc. will become the company to which you will owe the amounts due on your account."²⁰

49. An article on CNNMoney.com explains that Bill Me Later "runs a credit check to gauge the credit-worthiness of the customer, then uses CIT Bank (CIT, Fortune 500) bank to finance online consumer purchases. *Then Bill Me Later buys the loan from CIT* and charges the customer 20% interest on the balance of the loan."²¹ There is no economic substance to this relationship. It is a pure "round-trip" transaction, similar to money laundering.

50. Likewise, in its 10-Q dated April 28, 2009, eBay acknowledged that:

Bill Me Later is neither a chartered financial institution nor is it licensed to make loans in any state. Accordingly, Bill Me Later

¹⁸ Seeking Alpha, eBay Q2 2009 Earnings Call Transcript (Jul. 22, 2009), <http://seekingalpha.com/article/150628-ebay-q2-2009-earnings-call-transcript?page=1> (last visited May 18, 2010).

¹⁹ eBay Inc., Quarterly Report (Form 10-Q), at 40-41, (Apr. 28, 2009).

²⁰ Bill Me Later, Terms and Conditions of the Bill Me Later Payment System (2009), <https://www.securecheckout.billmelater.com/paycapture-content/fetch?hash=PD4106KD&content=bmlweb/bmlwebmnc.html> (last visited May 18, 2010).

²¹ Scott Moritz, *EBay to lend buyers a hand*, CNNMoney.com, Oct. 6, 2008, <http://money.cnn.com/2008/10/06/technology/ebay-bill-me.fortune/index.htm> (last visited May 18, 2010).

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1 relies on CIT Bank to extend credit to Bill Me Later customers in
 2 order to offer the Bill Me Later service. When a consumer makes a
 3 purchase using the Bill Me Later service, CIT Bank funds the
 4 consumer loan at the point of sale and advances funds to the
 5 merchant. *Bill Me Later then purchases the receivable related to*
 6 *the consumer loan extended by CIT Bank. Although CIT Bank*
 7 *continues to own each customer account, Bill Me Later owns the*
 8 *related receivable and is responsible for all servicing functions*
 9 *related to the account.* . . . We currently fund the purchase of
 10 receivables related to Bill Me Later accounts through free cash flow
 11 generated from our portfolio of businesses and from our existing line
 12 of credit.²²

13 Thus, Bill Me Later exerts ownership and control over these loans, for which it is the sole and
 14 immediate purchaser of the accounts receivable. Stated differently, Defendants are the entities that
 15 are legally responsible for ensuring the consumer loan is funded. This is demonstrated by, in part,
 16 the fact that Defendants have structured a prearranged agreement with CIT Bank where Defendants
 17 make the loan approval decisions and are then also obligated to reimburse CIT Bank the entire
 18 amount of money CIT Bank briefly advances to the merchants on behalf of Bill Me Later.

19 51. And in its 10-Q eBay further acknowledged that it carries all of the risks associated
 20 with these loans:

21 As of March 31, 2009, Bill Me Later had an aggregate consumer loan
 22 portfolio of approximately \$507.6 million. Like other businesses
 23 with significant exposure to losses from consumer loans, the Bill Me
 24 Later service faces the risk that account holders will default on their
 25 payment obligations, resulting in accounts becoming uncollectible,
 26 and the risk of potential charge-offs related to the loan portfolio.²³

27 Moreover, eBay's independently audited financial statements, like this one, recognize that these
 28 consumer loans are assets of Bill Me Later. Once again, there is no economic substance to this
 relationship, as Bill Me Later owns both the account liabilities and receivables – it is tantamount to
 laundering money but instead Bill Me Later is “loan laundering.”

52. Bill Me Later makes a hollow representation that its open-end instant credit plan is
 offered through CIT Bank. However, Bill Me Later is the true lender of the consumer loans
 because it: is the sole entity to interface with the consumers, owns and controls the branding of the
 loans which are available only through its credit software engine, provides the online loan

²² EBay Inc., Quarterly Report (Form 10-Q), at 40 (Apr. 28, 2009).

²³ *Id.* at 41.

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1 applications for consumers, accepts the online loan applications from consumers, reviews the credit
 2 of consumer applicants, decides whether to make the loans, is the entity to extend the credit to
 3 consumers, services the accounts, accepts loan payments from consumers, bears the financial risk
 4 of loss for these loans in the event of a consumer default, claims the consumer loans as assets in its
 5 independently audited financial statements, and sets the late fees and interest rates about which
 6 Plaintiff and the classes complain. CIT Bank is not the lender, and instead Bill Me Later uses
 7 CIT's bank charter for purposes of avoiding California laws limiting excessive late fees and
 8 usurious interest rates.

9 53. An article in Forbes explains that prior to CIT Bank's involvement in Bill Me
 10 Later's scheme, it used JPMorgan Chase "to underwrite [its] credit risk. That let Bill Me Later
 11 customers carry a balance at a credit-card-like 18% annual rate. In turn, [Bill Me Later] pa[id]
 12 JPMorgan the prime rate plus a few basis points on these balances."²⁴

13 54. This scheme is similar to that used by some unlawful payday lenders, known as
 14 "rent-a-charter" or "rent-a-bank" whereby:

15 [P]ayday lenders make their loans through the nominal auspices of
 16 out-of-state banks, which are exempted from state usury laws. In a
 17 typical charter-renting scheme, the payday lender markets the loans,
 18 accepts applications, interacts with customers, and retains the
 19 predominant economic interest in the transaction. . . . While the
 20 scheme rests on the payday lender's claim to be acting as a mere
 21 'agent' for the out-of-state bank, the payday lender is the de facto
 22 lender. The bank's economic interest in the loan is generally limited
 23 to the fee it receives from the payday lender for the use of its charter.
 24 Rent-a-charter has been widely criticized by state and federal
 25 regulators²⁵

26 55. Indeed, eBay describes in a recent 10-Q that:

27 Our Bill Me Later service is similarly subject to a variety of laws and
 28 regulations. Although Bill Me Later does not originate loans, *one or
 more jurisdictions may conclude that Bill Me Later is a lender or
 money transmitter or loan broker*, which could subject us to liability
 or regulation in one or more jurisdictions. Additionally, federal

²⁴ Erika Brown, Technology: *Credit Card Killer*, Forbes.com, Dec. 11, 2006, http://www.forbes.com/forbes/2006/1211/068_2.html (last visited May 18, 2010); Bill Me Later, About Bill Me Later: The Product (2009), https://www.billmelater.com/about/index.xhtml?s_kwid=billmelater (last visited May 18, 2010).

²⁵ Ellen Harnick, Center for Responsible Lending Policy Analysis, *Georgia's Payday Loan Law: A Model for Preventing Predatory Payday Lending*, June 2006, <http://www.responsiblelending.org/payday-lending/policy-legislation/states/pa-GeorgiaPayday-0606.pdf> (last visited May 18, 2010).

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regulators could mandate changes to the relationship between Bill Me Later and CIT Bank, the financial institution that Bill Me Later relies on to extend credit to customers with the Bill Me Later service. Any adverse changes in this relationship could negatively impact Bill Me Later's ability to continue operating its business as currently conducted.²⁶

56. Bill Me Later is responsible for, exerts control over, and indeed sets the terms of the loans offered to consumers. The terms of these loans violate the provisions of Civil Code section 1671 because the excessive late fees set and charged by Bill Me Later bear no reasonable relationship to the range of actual damages incurred by Bill Me Later and are instead unlawful and unfair penalties.²⁷

Fee for paying late	If the balance is:	The late fee is:
	Under \$5.00	\$0.00
	\$5.00 to \$19.99	\$5.00
	\$20.00 to \$149.99	\$19.00
	\$150.00 to \$249.99	\$29.00
	Over \$249.99	\$39.00

57. Bill Me Later is responsible for, exerts control over, and indeed sets the terms of the loans offered to consumers. The terms of these loans violate the provisions of Section 1 of Article XV of the California Constitution because these loans bear usurious rates: the annual percentage interest rate set and charged by Bill Me Later is 19.99% – far in excess of the 10% permitted by the California Constitution.²⁸ As detailed in a Wall Street Journal article:

If you don't pay in full within 30 days, you'll face 19.9% interest on the amount owed. Additionally, there are tiered fees, which vary depending on the total balance owed. . . . Bill Me Later tends to draw consumers with higher credit profiles and that approximately

²⁶ EBay Inc., Quarterly Report (Form 10-Q), at 36 (Apr. 28, 2009).

²⁷ Bill Me Later, Terms and Conditions of the Bill Me Later Payment System (2009), <https://www.secure.checkout.billmelater.com/paycapture-content/fetch?hash=PD4106KD&content=bmlweb/bmlwebmc.html> (last visited May 18, 2010).

²⁸ *Id.*

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65% of the site's customers pay on time and in full. But 35% do not²⁹

In fact, when the tiered late fees are included, the imputed APR can exceed 100%.

58. Bill Me Later first approved a loan for Plaintiff in or about October 2008 to finance a \$1,068.08 computer purchase from Cyberpower Inc. Plaintiff's initial stated annual percentage rate was 19.99%. On subsequent monthly bills, Bill Me Later imposed more than one thirty-nine dollar (\$39) late penalty fee, which is far in excess of the actual damages Plaintiff caused Bill Me Later by his late payment.

59. In addition, if one were to compute the assessed late penalty fee as an annual percentage rate, Plaintiff has been charged more than a 70% annual interest rate during his monthly billing cycles. Had Defendants fully informed Plaintiff that the interest rates and penalty fees violated state law, or if Defendants had fully disclosed their scheme to attempt to avoid state law, Plaintiff would not have used Bill Me Later's services.

60. Plaintiff's experience is typical of Bill Me Later's illegal practices. For example, one consumer complains:

While ordering books online for \$40.87, I was invited to open a BillMeLater account, which I did, wanting to know how it worked; I paid \$20.07 for the first billing cycle. I forgot the due date of the second billing cycle, since it's not part of my regular bills. On a balance of \$20.87, I was charged a late fee of \$19.00, plus \$2 finance charge. On their website, my statement shows an **ANNUAL PERCENTAGE RATE OF 115% !!!** I am charged a daily fee of \$0.35. I wanted to pay my total remaining balance, & immediately cancel my account. Their system did not allow me to do that: I had to do it on two different days; in the meantime, of course, they are charging more money. This is pure usury; these companies should not be allowed to be in business; they should be sued, made to reimburse their exorbitant fees, terminated, and closed.³⁰

61. Another consumer complains: "They are charging *annual percentage rate of 104.35%[.]* Isn't this against the law?"³¹

²⁹ Mary Pitan, *Bill Me Later Can Ding Your Credit Score Now*, WSJ Blogs The Wallet, Dec. 9, 2008, <http://blogs.wsj.com/wallet/2008/12/09/bill-me-later-can-ding-your-credit-score-now/> (last visited May 18, 2010).

³⁰ See RipoffReport.com, Report: BillMeLater, <http://www.ripoffreport.com/Credit-Debt-Services/BillMeLater/billmelater-stay-away-from-bil-eq8f2.htm> (last visited May 18, 2010).

³¹ See Complaints.com, *Bill Me Later - Don't Use them!*, Nov. 7, 2009, <http://www.complaintsboard.com/complaints/bill-me-later-c124715/page/1.html> (last visited May 18, 2010).

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62. Another consumer posting states: "I had problems with them also. First of all no billing statements, then finally after four or five months you get one, with late fees and finance charges out the wazoo. Did you ever notice the **42.74% annual percentage rate**. Is this legal?"³²

63. Another consumer posting states: "And **my interest rate is 64.83%!!! MY EXPERIENCE WITH BILL ME LATER WAS ABSOLUTELY TERRIBLE. IT IS A SCAM AND A RIP OFF.** My \$45 flower purchase became a practically \$200 flower purchase and a huge headache."³³

64. Another consumer complains: "Late with a payment for a 46.00 balance and was charged additionally 19.00 plus 2.00 'finance charge.' Made online account to pay 21.00 balance and they show I owe 31.00? (46.20 check sent late has been cashed). Get this: '**Annual percentage rate for this billing cycle: 51.95%**.'"³⁴

65. Another consumer complains:

[I] used BML one time for a christmas purchase this year. i thought it seemed interesting, so i wanted to try it. my purchase was under \$30. they sent me a bill online. i could not figure out how to log in to the website to pay it, and i kept putting it off. it ended up being late because i forgot about it (my fault, i know). so, when i finally figured out how to log in to the site, they were **charging me 95% APR!!!!!!!!!!!!!! OH MY GOD, ARE YOU KIDDING ME?** so, i ended up having to pay over 45 bucks for the thing. i couldn't believe it. obviously, it was my fault that the payment was late, BUT it should be ILLEGAL to charge someone that much in interest.³⁵

66. Similarly, another Bill Me Later customer states:

Then at the beginning of August I got a bill from them forwarded from our old address through the post office forwarding we set up. The bill was dated July 7 with a due date of August 1. I got this well after August 1. They never changed our address. It showed a balance of \$13.00 for a \$9.00 late fee and two \$2.00 finance charges, with **this bill showing an APR of (I am not kidding or exaggerating**

³² See ComplaintsBoard.com, *Bill Me Later Complaints – late fees, fiance charges, missing bills*, Nov. 16, 2008, <http://www.complaintsboard.com/complaints/bill-me-later-c124715/page/1.html> (last visited May 18, 2010).

³³ See, e.g., *id.*

³⁴ See Bloomberg Businessweek: *The Tech Beat, Quickie Reader Survey: Have you used "Bill Me Later?"*, Dec. 29, 2005, http://www.businessweek.com/the_thread/techbeat/archives/2005/12/quickie_reader_survey_have_you_used_bill_me_later.html (last visited May 18, 2010).

³⁵ *Id.*

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1 *here) 116.67%. My husband had received a similar bill, after not*
 2 *receiving bills for something with over 76% APR.³⁶*

3 67. A consumer posting also complains: "*The APR on my December statement was*
 4 *19.99%; it rose to 23.34% on my January statement, and this month it is a whopping 41.44%!*"³⁷

5 68. Another consumer states:

6 Last November I purchased several books on Amazon with a gift
 7 certificate. The total was \$15.63 over the amount of my gift cert. and
 8 I was offered a Bill Me Later option which I assumed was part of
 9 Amazon. I received the bill in the mail after the stated due date, so I
 paid the \$15.63 I owed. Ever since I have been receiving bills from
 them with late fees and *annual percentage rates up to 180%*. The
 latest bill is \$150.00. On what planet would someone pay that
 amount on a \$15 bill?³⁸

10 69. Another consumer posting notes: "Here's the kicker.... THEY HAVE TWO
 11 *ANNUAL PERCENTAGE RATES DEPENDING ON HOW YOUR BALANCE IS*
 12 *CALCULATED. One is 19.99% and THE OTHER IS 102.70%!*"³⁹

13 70. And another customer of Bill Me Later complains: "There is a place on this
 14 statement in front of me that says their *ANNUAL PERCENTAGE RATE for this billing cycle is*
 15 *104.39%*. No one, for anything, should charge an APR 104.39%. Further, adding on late fees in
 16 excess of the original debt is absurd."⁴⁰

17 VII. CAUSES OF ACTION

18 FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT

19 (AGAINST ALL DEFENDANTS)

20 71. Plaintiff repeats and realleges the foregoing allegations as if fully set forth in this
 21 paragraph.

22
 23 ³⁶ See Complaints.com, *www.bill-me-later.com*, Sept. 14, 2006, http://www.complaints.com/2006/september/14/www.bill-me-later.com_157.htm (last visited May 18, 2010).

24 ³⁷ See Defendyourdollars.org, *Bill Me Later might mean Pay Up Much More Later*, Oct. 20, 2008, http://www.defendyourdollars.org/2008/10/bill_me_later_might_mean_pay_u.html (last visited May 18, 2010).

25 ³⁸ See my3cents.com, *Bill Me Later SCAM according to Amazon - online credit*, Aug. 17, 2009, <http://www.my3cents.com/showReview.cgi?id=60847> (last visited May 18, 2010).

26 ³⁹ See ComplaintsBoard.com, *Bill Me Later Complaints - Bill me later system sucks!*, Mar. 13, 2008, <http://www.complaintsboard.com/complaints/bill-me-later-c2757.html> (last visited May 18, 2010).

27 ⁴⁰ See Consumeraffairs.com, *Bill Me Later*, June 17, 2009, http://www.consumeraffairs.com/credit_cards/bill_me_later.html (last visited May 18, 2010).

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1 72. The contracts between Defendants and Plaintiff and the Plaintiff Classes are
 2 consumer contracts, i.e., contracts for the "retail purchase, or rental, by such party of personal
 3 property or services, primarily for the party's personal, family, or household purposes." Cal. Civ.
 4 Code § 1671(c)(1).

5 73. Accordingly, the clause by which Defendants collect their excessive late fees from
 6 Plaintiff and the Plaintiff classes are "void except that the parties to such a contract may agree
 7 therein upon an amount which shall be presumed to be the amount of damage sustained by a breach
 8 thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix
 9 the actual damage." Cal. Civ. Code § 1671(d).

10 74. The late fees Defendants include in their consumer contracts are void under
 11 California Civil Code section 1671, subdivision (d) because it is neither impracticable nor
 12 extremely difficult to ascertain the actual damage, if any, that Defendants sustain as the result of
 13 late payment of invoices by consumers; it is contained in a contract of adhesion; and the primary
 14 motivation for and effect of the charge is to earn additional profits for, and not to compensate,
 15 Defendants.

16 WHEREFORE, Plaintiff prays for judgment and relief as set forth below.

17 **SECOND CAUSE OF ACTION FOR VIOLATIONS OF THE CONSUMERS LEGAL**
 18 **REMEDIES ACT**

19 **(AGAINST ALL DEFENDANTS)**

20 75. Plaintiff repeats and realleges the foregoing allegations as if fully set forth in this
 21 paragraph.

22 76. The above-described conduct of Defendants violates the Consumers Legal
 23 Remedies Act, California Civil Code sections 1750, *et seq.*, by:

24 (a) Passing off goods or services as those of another (Cal. Civ. Code
 25 § 1770(a)(1));

26 (b) Misrepresenting the source, sponsorship, approval, or certification of goods
 27 or services (Cal. Civ. Code § 1770(a)(2));

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(c) Misrepresenting the affiliation, connection, or association with, or certification by, another (Cal. Civ. Code § 1770(a)(3));

(d) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have (Cal. Civ. Code § 1770(a)(5));

(e) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another (Cal. Civ. Code § 1770(a)(7));

(f) Advertising goods or services with intent not to sell them as advertised (Cal. Civ. Code § 1770(a)(9));

(g) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law (Cal. Civ. Code § 1770(a)(14)); and

(h) Inserting an unconscionable provision in the contract (Cal. Civ. Code § 1770(a)(19)).

77. Pursuant to California Civil Code section 1780, subdivision (a), Plaintiff seeks an order enjoining Defendants from engaging in the methods, acts, or practices alleged herein. Pursuant to California Civil Code section 1782, if Defendants do not rectify its illegal acts, Plaintiff intends to amend this complaint request the following relief: a) actual damages; b) restitution of money to Plaintiff and class members; c) punitive damages; d) attorneys' fees and costs; and e) other relief that this Court deems proper.

WHEREFORE, Plaintiff prays for judgment and relief as set forth below.

THIRD CAUSE OF ACTION FOR VIOLATIONS OF THE CALIFORNIA CONSTITUTION

(AGAINST ALL DEFENDANTS)

78. Plaintiff repeats and realleges the foregoing allegations as if fully set forth in this paragraph.

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1 79. Defendants have violated Section 1 of Article XV of the California Constitution,
2 California's usury law.

3 80. The transactions at issue are loans or forbearances within the meaning of Section 1
4 of Article XV of the Constitution.

5 81. The interest charged by Bill Me Later is unlawful because it exceeds the statutory
6 maximum of 10% for any loan or forbearance of any money, goods, or things in action, where the
7 money, goods, or things in action are for use primarily for personal, family, or household purposes
8 within the meaning of Section 1 of Article XV of the Constitution, subdivision (1).

9 82. The said loans and interest thereon are absolutely repayable to Bill Me Later.

10 83. Bill Me Later has a willful intent to enter into a usurious transaction in that the
11 conscious and voluntary taking of more than the legal rate of interest constitutes usury and the only
12 intent necessary on the part of the lender is to take the amount of interest which it receives.

13 WHEREFORE, Plaintiff prays for judgment and relief as set forth below.

14 **FOURTH CAUSE OF ACTION IN VIOLATION OF BUSINESS AND PROFESSIONS**
15 **CODE SECTIONS 17200, ET SEQ.**

16 **(AGAINST ALL DEFENDANTS)**

17 84. The preceding paragraphs of this Complaint are realleged and incorporated by
18 reference and asserted against Defendants Bill Me Later and eBay.

19 85. California Business and Professions Code section 17200 prohibits any "unlawful,
20 unfair, or fraudulent business act or practices." Defendants have engaged in unlawful and unfair
21 business acts and practices in violation of section 17200.

22 86. Defendants have violated the unlawful prong of section 17200 because Defendants
23 have violated Civil Code section 1671 by the acts and practices set forth in this Complaint.

24 87. The late fees charged by Bill Me Later are in conjunction with consumer loans for
25 the retail purchase, or rental, of personal property or services primarily for the personal, family, or
26 household purposes within the meaning of Civil Code section 1671, subdivision (c)(1).

1 88. The late fees charged by Bill Me Later are unlawful under Civil Code section 1671,
2 subdivision (d) because they amount to penalties far in excess of and without reasonable
3 relationship to the amount of damages sustained by Bill Me Later as a result of late payments.

4 89. Defendants have violated California's Consumers Legal remedies Act, Cal. Civ.
5 Code sections 1750, *et seq.*, by the acts and practices set forth in this Complaint.

6 90. Defendants have violated the unlawful prong of section 17200 because Defendants
7 have violated Section 1 of Article XV of the California Constitution, California's usury law, by the
8 acts and practices set forth in this Complaint.

9 91. The transactions at issue are loans or forbearances within the meaning of Section 1
10 of Article XV of the Constitution.

11 92. The interest charged by Bill Me Later is unlawful because it exceeds the statutory
12 maximum of 10% for any loan or forbearance of any money, goods, or things in action, where the
13 money, goods, or things in action are for use primarily for personal, family, or household purposes
14 within the meaning of Section 1 of Article XV of the Constitution, subdivision (1).

15 93. The said loans and interest thereon are absolutely repayable to Bill Me Later.

16 94. Defendants have a willful intent to enter into a usurious transaction in that the
17 conscious and voluntary taking of more than the legal rate of interest constitutes usury and the only
18 intent necessary on the part of the lender is to take the amount of interest which it receives.

19 95. Defendants have violated the unfair prong of section 17200 because the acts and
20 practices set forth in the Complaint offend established public policy, and because the harm they
21 cause to consumers in California greatly outweighs any benefits associated with those practices.

22 WHEREFORE, Plaintiff prays for judgment and relief as set forth below.

23 **FIFTH CAUSE OF ACTION FOR AIDING AND ABETTING**

24 **(AGAINST EBAY)**

25 96. The preceding paragraphs of this Complaint are realleged and incorporated by
26 reference and asserted against Defendant eBay.

27 97. EBay has aided and abetted Bill Me Later in violating California's consumer-
28 protection laws and California's constitution to the detriment of Plaintiff and the Classes.

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1 98. EBay has so acted with knowledge of the unlawful purpose of Bill Me Later to
2 avoid California's consumer-protection laws, thereby causing injury to consumers and competitors.

3 99. EBay has acted with the intent or purpose of encouraging or facilitating the
4 violations of California's consumer-protection laws and the California constitution.

5 100. EBay has provided financial support, which aids, promotes, encourages Bill Me
6 Later to implement and continue to unlawfully charge contractual penalties and usurious interest
7 rates.

8 WHEREFORE, Plaintiff prays for judgment and relief as set forth below.

9 **VIII. PRAYER FOR RELIEF**

10 Plaintiff and the Classes pray for judgment against Defendants as follows:

11 A. An order by which the Court enjoins Defendants from performing or proposing to
12 perform or aiding and abetting any acts of unfair competition in California;

13 B. A restitution order requiring that Defendants restore to California borrowers all
14 funds improperly received by Defendants;

15 C. An order rescinding all loan contracts between California borrowers and any
16 Defendant made in violation of California law;

17 D. An order by which the Court requires Defendants to cooperate fully to remove all
18 adverse information related to loan contracts made in violation of California law from the credit
19 reports of consumers harmed by Defendants' unfair practices;

20 E. An order requiring that defendant pay damages equal to three times the interest paid
21 by Plaintiff and the Classes;

22 F. A declaration that all future interest to be charged on loan contracts to Plaintiff and
23 the Classes is void and contrary to both law and the California constitution;

24 G. Punitive damages;

25 H. Costs of suit;

26 I. Both pre- and post-judgment interest on any amounts awarded;

27 J. Payment of reasonable attorneys' fees as required under California Civil Procedure
28 Code section 1021.5; and

010133-12 370832 V1

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1 K. For such further and additional relief as the Court deems proper.

2 IX. DEMAND FOR JURY TRIAL

3 Plaintiff hereby demands a trial by jury.

4 Dated: May 21, 2010

HAGENS BERMAN SOBOL SHAPIRO LLP

5 By 
6 JEFF D. FRIEDMAN

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15 Attorneys for Plaintiff



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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jeff D. Friedman, SB# 173886 HAGENS BERMAN SOBOL SHAPIRO LLP 715 Hearst Avenue, Suite 202 Berkeley, CA 94710 TELEPHONE NO.: (510) 725-3000 FAX NO.: (510) 725-3001 ATTORNEY FOR (Name): Kyle Sawyer		CM-010 FOR COURT USE ONLY FILED Los Angeles Superior Court MAY 21 2010 John A. Swain, Executive Officer/Clerk By DOROTHY SWAIN, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: CENTRAL DISTRICT		
CASE NAME: Kyle Sawyer v. Bill Me Later, Inc., eBay Inc., PayPal, Inc., et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		CASE NUMBER: BC438153
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/D/W/D (23) Non-PIP/D/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/D/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify):
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **May 21, 2010**

Jeff D. Friedman

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PUPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PUPD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PUPD/WD

Non-PUPD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PUPD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller
Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage

Other Contract (37)

Contractual Fraud
Other Contract Dispute
Real Property
Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (28)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

ORIGINAL

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SHORT TITLE: Sawyer v. Bill Me Later, Inc., et al.	CASE NUMBER BC438153
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**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☒ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 7 ☐ HOURS/ ☒ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|---|--|
| 1. Class Actions must be filed in the County Courthouse, Central District. | 6. Location of property or permanently garaged vehicle. |
| 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). | 7. Location where petitioner resides. |
| 3. Location where cause of action arose. | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred. | 9. Location where one or more of the parties reside. |
| 5. Location where performance required or defendant resides. | 10. Location of Labor Commissioner Office. |

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4. 1., 2., 4. 1., 2., 3. 1., 2., 4.
	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
Non-Personal Injury/Property Damage/Wrongful Death Tort	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

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Non-Personal Injury/Property Damage/
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Judicial Review Unlawful Detainer

SHORT TITLE: Sawyer v. Bill Me Later, Inc., et al.		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach - Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input checked="" type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute (not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer- Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

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SHORT TITLE: Sawyer v. Bill Me Later, Inc., et al.	CASE NUMBER
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Judicial Review (Cont'd.)

Provisionally Complex
LitigationEnforcement
of JudgmentMiscellaneous Civil
Complaints

Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6008 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

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SHORT TITLE: Sawyer v. Bill Me Later, Inc., et al.	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE		ADDRESS: 20705 Osage Avenue, Apt. 3	
<input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			
CITY: Torrance	STATE: CA	ZIP CODE: 90503	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the SUPERIOR courthouse in the CENTRAL District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: May 21, 2010

 (SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge S. James Otero and the assigned discovery Magistrate Judge is Jay C. Gandhi.

The case number on all documents filed with the Court should read as follows:

CV10 - 4461 SJO (JCGx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> KYLE SAWYER, Individually and on behalf of all others similarly situated		DEFENDANTS BILL ME LATER, INC., EBAY INC., PAYPAL, INC., and DOES 1-100	
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Jeff D. Friedman (173886); Shana E. Scarlett (217895) Hagens Berman Sobol Shapiro LLP, 715 Hearst Ave., Suite 202 Berkeley, CA 94710 - Telephone: (510) 725-3000		Attorneys (If Known) Thomas P. Brown (S.B. #182916); Randall W. Edwards (S.B. #179053) O'Melveny & Myers LLP Two Embarcadero Center, 28th Fl. San Francisco, CA 94111-3923 - Telephone: (415) 984-8700	

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:40%;">Citizen of This State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td></td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td></td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF		<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF																				
	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

☐ 1 Original Proceeding
 ☒ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify):
 ☐ 6 Multi-District Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No
 MONEY DEMANDED IN COMPLAINT: \$ exceeds \$25,000 dollars

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 28 U.S.C. §§ 1332, 1446 and 1453 - This is a putative class action "brought in a State court of which the district courts of the United States have original jurisdiction."

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV10 4461

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s):

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or

☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Plaintiff, Kyle Sawyer, Resides in Torrance, California, County of Los Angeles.	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Defendants eBay Inc. and PayPal, Inc.'s headquarters are in San Jose, California, County of Santa Clara.	Defendant Bill Me Later's headquarters are in Timonium, Maryland.

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Utah

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date June 16, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))